IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6555 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISSAR ALIAS SALIM YAKUBBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR ST MEHTA ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/01/2000

ORAL JUDGEMENT

Leave granted to the petitioner to amend the cause title as well as the prayer clause so as to correct the description of respondent No.2 as Commissioner of Police, Ahmedabad instead of Surat.

#. Heard Mr.Champaneri, learned advocate for Mr.M.H.Barejia, learned advocate for the petitioner and Mr.S.T.Mehta, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 15-4-1999 passed by respondent No.2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure_C interalia indicates that in all 4 prohibition cases were registered against the petitioner at different police stations on 28-6-98, 29-7-98, 18-11-98 and 14-3-1999. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. It is also stated therein that except case registered vide C.R.No : 5151 of 1998, all other three cases are pending for further investigation, while the said case is pending for trial. That the petitioner was released on bail in three of the cases. That while he was in judicial custody on the date of passing of the order in respect to case registered vide C.R. No : 260 of 1999 dated 14-3-99 at Nashabandhi Police station (East).

#. That two witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statements dated 14-4-1999, wherein, the incidents of 18-3-1999 and 21-3-1999 respectively were stated. That in consideration of the above stated material, the respondent No.2 - the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind. It is submitted that before passing the order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the

subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, in the last but one para of grounds for detention, the detaining authority has observed that in the cases stated at Sr.No.1 to 3, the petitioner has been released on bail while in respect to the case stated at Sr.No.4, he is in judicial custody. However, he is likely to get himself released on bail in respect to 4th case also and thereafter, he is likely to continue his anti social activities and thereby in the interest of public order, the detention order is necessary. The said observation of the detaining authority disclosed that while passing the impugned order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail in pending cases registered against the petitioner during the period, whereas the petitioner was in judicial custody in case registered vide C.R.No : 260 of 1999 at Nashabandhi Police Station (East). Under the circumstances, I am constrained to hold that the impugned order is bad in law for non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 15-4-1999 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - Nissar alias Salim Yakubbhai Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 12-1-2000 [A.K.Trivedi, J.]

#kailash#